

# Notice of Allowability

Application No.

09/940,309

Examiner

Phyllis G. Spivack

Applicant(s)

RICHTER ET AL.

Art Unit

1614

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to September 8, 2005.
2. ☒ The allowed claim(s) is/are 46-59, now renumbered 1-14.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

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Applicants' Amendment filed September 8, 2005 is acknowledged. Claims 46-59 remain under consideration.

In the last Office Action the claims remained rejected under 35 U.S.C. 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to practice the invention.

Following an amendment to claim 46 such that the claim is now limited to a method of combating Parkinson's disease-related movement disorder, who is being treated with dopaminergic medication, anticonvulsant medication or anxiolytic medication, comprising administering mirtazapine.

Accordingly, the rejection of record under 35 U.S.C. 112, first paragraph, is presently withdrawn based on the rejection that was maintained in the last Office Action

None of the prior art references teaches or suggests the claimed method of instant claim 46. Therefore, claims 46-59 are allowed in view of the contemporary knowledge of the art.

#### EXAMINER'S AMENDMENT

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The present title is deleted and -- Combating Parkinson's disease-related movement disorder -- is inserted therefor.

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The present Abstract is deleted and --

A method of combating movement disorder is disclosed in a patient with Parkinson's disease comprising administering an effective amount of mirtazapine, a receptor antagonist for  $5HT_{2/3}$  and  $\alpha_2$  receptors. --

Is inserted therefor.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The Examiner can normally be reached from 10:30 to 7 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Christopher Low, can be reached 571-272-951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 16, 2005



Phyllis Spivack

1614

**PHYLLIS SPIVACK  
PRIMARY EXAMINER**

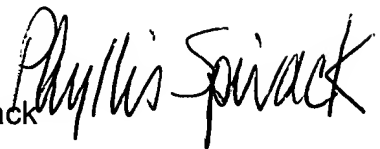
### EXAMINER'S COMMENT

At 5:04 PM on September 12, 2005, Applicant's representative, Mr. Steven Hultquist, telephoned the Examiner apparently in an attempt to find out why a response that had been FAXed to the USPTO on September 8, 2005 had not been acknowledged.

A response to his phone inquiry was made within several hours during the evening of September 12, 2005. It was not possible to access Mr. Hultquist's direct phone line after business hours, so a message was left on the general, receptionist's, line.

The content of the Examiner's message was to state Examiners presently have no control as to entry of Fax communications. A referral to Brenda Gray, a supervisor for such clerical issues in TC 1600, and her phone number were left on the phone message.

Phyllis Spivack



Primary Examiner

1614

September 16, 2005